



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 30, 1995

Mr. S. Anthony Safi
Law Offices of Mounce & Galatzan
P.O. Drawer 1977
El Paso, Texas 79950-1977

OR95-165

Dear Mr. Safi:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28397.

The El Paso Independent School District (the "school district"), which you represent, has received a number of requests for certain credit card billing statements. Specifically, the requestor seeks "[c]opies of the monthly American Express and other corporate credit cards statements from July 1993 through May 1994," excluding the credit card account numbers.¹ You claim that the school district may withhold the requested information from required public disclosure under the Open Records Act.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

¹Although the requestor did not initially exclude the credit card account numbers from her request, she has now indicated to this office that she does not want the credit card account numbers.

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

The first request for information is dated July 20, 1994. You requested a determination of this office by letter postmarked August 11, 1994. On the basis of these facts, we conclude that you failed to request a decision within the ten day period section 552.301(a) of the Government Code mandates.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, a governmental body can overcome the presumption of openness by a compelling demonstration that the governmental body should not release the requested information to the public, that is, that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You claim that sections 552.101 and 552.102 of the Government Code except the requested information from required public disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 of the Government Code protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

You assert common-law privacy in this instance, relying on Open Records Decision Nos. 373 (1983) and 545 (1990). In Open Records Decision No. 373, this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded as follows:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373, at 3. In Open Records Decision No. 545, this office applied a similar presumption to personal financial information of public employees and held that, absent "special circumstances," information concerning a public employee's participation in a deferred compensation plan is protected from disclosure by common-law privacy. Open Records Decision No. 545, at 4-5.²

You advise us that the credit card at issue here is issued in the name of the school district superintendent and that the school district reimburses expenses charged to the credit card as part of the superintendent's compensation. The credit card is issued under the following provision in the superintendent's employment contract:

The District shall pay directly or reimburse the Superintendent, in addition to the annual salary herein provided, all reasonable and necessary expenses incurred by the Superintendent in his conduct on behalf of the District, and the Superintendent shall document all said expenses with receipts, canceled checks or credit card slips.

Under the employment contract expenses charged to the credit card are not personal expenses constituting "personal financial information," as you claim, but official school district expenses. While the superintendent may exercise his judgment in placing expenses on the credit card account, such judgment cannot be characterized as personal in nature, but as within the scope of the superintendent's official business under his employment contract. We note, as well, that the Open Records Act specifically makes public "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." Gov't Code § 552.022(3). Furthermore, we believe that your reliance on Open Records Decision Nos. 545 and 373 in this instance is incorrect. We conclude, therefore, that the public's interest in the requested credit card information overcomes whatever embarrassment release of the

²This office has distinguished between background financial information and information regarding a particular transaction between the individual and a public body. See Open Records Decision No. 373. For example, this office has held that the amount of a debt to a public hospital, together with the names of debtors and dates of delinquency, is not excepted by common-law privacy. Open Records Decision Nos. 525 (1989); 385 (1983).

credit card information may cause the superintendent. Accordingly, the school district may not withhold the requested information under sections 552.101 and 552.102 of the Government Code and must release all the information in the statements except for the credit card account numbers.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/SLG/GCK/rho

Ref.: ID# 28397

Enclosures: Marked documents

cc: Ms. Frances Wever
President
Federation of Teachers & Support Personnel
4024 Trowbridge
El Paso, Texas 79903
(w/o enclosures)